

1 UNITED STATES COURT OF FEDERAL CLAIMS

2 THE GEORGE SOLLITT CONSTRUCTION COMPANY,

3 Plaintiff,

4 Vs.

No. 99-979C

5 THE UNITED STATES OF AMERICA,

6 Defendant.

7 Deposition of JAMES ZIELINSKI taken before  
8 DONNA L. WATWOOD, C.S.R., and Notary Public,  
9 pursuant to the Federal Rules of Civil Procedure for  
10 the United States Court of Federal Claims pertaining  
11 to the taking of depositions, at 790 North Central,  
12 in the City of Wood Dale, DuPage County, Illinois,  
13 commencing at 10:07 a.m. on the 26th day of April,  
14 A.D., 2002

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1 APPEARANCES:

2 DEFREES & FISKE,

3 By MR. TIMOTHY J. RIORDAN,

4 200 South Michigan Avenue,

5 Chicago, Illinois 60604,

6 (312) 372-4000,

7 Appeared on behalf of Plaintiff;

8 LAW OFFICES OF DAVID I. ABSE,

9 By MR. DAVID I. ABSE,

10 951 Bermuda Lane,

11 Annapolis, Maryland 21401,

12 (410) 224-5725,

13 Appeared via telephone on behalf of

14 Plaintiff;

15 U.S. DEPARTMENT OF JUSTICE,

16 By MR. JOHN S. GROAT,

17 1100 "L" Street N.W.,

18 Room 11050,

19 Washington, D.C. 20530,

20 (202) 616-8260,

21 Appeared via telephone on behalf of

22 Defendant;

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1           APPEARANCES: (CONTINUED)  
2           COUNSEL NAVY PUBLIC WORKS,  
3           ENGINEERING FIELD ACTIVITY MIDWEST  
4           By MR. TIMOTHY J. HYLAND,  
5           201 Decatur Avenue,  
6           Building 1A,  
7           Great Lakes, Illinois 60088,  
8           (847) 688-3780) 616-8260,  
9           Appeared via telephone on behalf of  
10          Defendant.

1                   DEPOSITION OF JAMES ZIELINSKI

2                               APRIL 26, 2002

3                               JAMES ZIELINSKI, called as a witness  
4       herein, having been first duly sworn, was examined  
5       upon oral interrogatories and testified as follows:

6               EXAMINATION

7               By-Mr.Groat:

8               MR. GROAT:   Tim, can we proceed?

9               MR. RIORDAN:   You can.

10              BY MR. GROAT:

11              Q.   Mr. Zielinski, thank you for agreeing to  
12       the deposition.  I've reviewed the prior deposition  
13       that we conducted in this case and don't intend to  
14       go over the same points.  I would ask if there is  
15       any matters that arose during your prior deposition  
16       that you would wish to correct or clarify at this  
17       point in time, please understand I'm not trying to  
18       play a memory game here with you.  But if there's  
19       anything that should be clarified at this point, I  
20       would like you to do it.

21              A.   There's nothing I could think of, Jack.

22              Q.   Okay.  Is there any reason that you  
23       couldn't give full and complete answers to the  
24       questions today, such as illness or that you might  
25       be taking medication?

1           A.   No.

2           Q.   May I ask what you've reviewed in the  
3 course of preparing for your deposition today?

4           A.   I've reviewed the affidavit that I've  
5 signed.

6           Q.   Did you review any of the other -- appended  
7 to that affidavit are various documents. Have you  
8 reviewed any other documents in the course of the  
9 preparation for your deposition?

10          A.   Just the partial summary judgment. I did  
11 not go and look up any of the proposals that, you  
12 know, we've talked about previously.

13          Q.   And in the course of preparing your  
14 affidavit, did you consult any other documents?

15          A.   I'm sorry. I couldn't hear you.

16          Q.   In the course of preparing your affidavit,  
17 did you review or rely upon any other documents?

18          A.   No.

19          Q.   Previously someone has provided us a book  
20 of documents providing documentation supporting  
21 their change order requests. These particular  
22 claims at issue today were not in that book. Can  
23 you explain to us how and why that -- that occurred?

24          A.   I guess I don't understand what book we're  
25 talking about. And are we talking about the CX

1 proposals that -- folders that we opened up  
2 previously?

3 Q. Well, previously we had -- Sollitt had  
4 provided us various documentary material in support  
5 of its CX proposals. We didn't obtain the same  
6 details for the proposals that are at issue today.  
7 And I -- I'm just -- I'm interested in clarifying  
8 how information was -- was stored and how it was  
9 retrieved by you?

10 A. It's stored no different than any of the  
11 other proposals. If it has a CX number, which might  
12 correspond to some of your exhibits, et cetera,  
13 they're all filed in the same place. The Navy has  
14 got all the same correspondence. You could have got  
15 it that way. I can't explain why you wouldn't have  
16 everything that we're going to talk about today.

17 Q. Okay. Now, with regards to these change  
18 orders and the maintenance of documentation for  
19 them, is it correct that Sollitt did all the work at  
20 issue in these change orders?

21 A. All the work was under our contract. We  
22 did not self-perform each and every trade.

23 Q. Now, when Sollitt either performed or  
24 directed work to be performed by its subcontractors,  
25 did it contend that -- at that time that the work

1 was outside the scope of the original contract?

2 A. Yes.

3 Q. Were you the one who directed the work to  
4 be done as Sollitt's representative on site?

5 A. Yes.

6 Q. Did you personally anticipate the  
7 possibility of a claim being filed for this work?

8 A. Occasionally, yes.

9 Q. Now, when you say occasionally, as to the  
10 eight particular items at issue addressed in your  
11 affidavit, as to those eight items, did you -- when  
12 that work was directed, did you anticipate the  
13 submission of a claim when you directed the work to  
14 be performed?

15 A. No, I did -- No, I did not.

16 Q. Okay. If we could go through them just  
17 very briefly, and let's clarify which ones you might  
18 have thought there was going to be a claim and which  
19 ones you didn't. If you could turn to your  
20 affidavit?

21 A. I have it.

22 Q. Let me just go to tab one, which is  
23 referred to as the bathroom floor fill claim Was  
24 that an item that Sollitt -- that you recognized the  
25 possibility of a claim being submitted to them when

1           you directed the work to be  
2           performed?

3           A. No, not as a claim. I did recognize that  
4           it was added work, but not as a claim.

5           Q. Not as a claim.

6                        You say you did recognize it as added  
7           work?

8           A. Yes, it was.

9           Q. When did you first recognize this as a  
10          possible claim?

11          A. Immediately upon finding it that date. I'm  
12          not sure of the date. But as soon as the demolition  
13          is done, whatever, there was an R5 probably written,  
14          and we received direction from the Navy to do more  
15          work.

16          Q. Now, I guess I'm trying to clarify your  
17          conclusion that there had to be more work and  
18          submission of a claim. Did that occur at the same  
19          time, or did you -- did you -- Did you anticipate  
20          the possibility of a claim at some later point in  
21          time?

22          A. I didn't consider it a claim. What I  
23          considered it was that if the depression that I  
24          could see with my eyes after we did the demolition  
25          was that an elevation in the bathroom different than



1 the hallway, I could see that that wasn't in the  
2 contract documents. Therefore, added work would be  
3 necessary, which the Navy, you know, also  
4 recognized. And they told us to fill it and make it  
5 flush with the outside, and we performed that work.  
6 I did not anticipate that we would be taking  
7 depositions and in a claim mode at this time.

8 Q. I understand that. What you're -- your  
9 distinction you're drawing between additional work.  
10 And let me again clarify this, because what I'm  
11 interested in is when you first concluded that  
12 additional work would be required. And by  
13 additional work, you mean you additional work  
14 outside the scope of the contract?

15 A. Yes, I do.

16 Q. Let's turn to tab two, running black sand  
17 issue.

18 MR. RIORDAN: Well, Jack, just for  
19 clarification, I think when you were using the term  
20 claim earlier, Mr. Zielinski was thinking of it from  
21 the standpoint of legal claim at some point in time  
22 rather than a change order request. Can we agree  
23 that that was the understanding earlier?

24 MR. GROAT: That might be the better way to put  
25 it.

1 BY MR. GROAT:

2 Q. Mr. Zielinski, Mr. Riordan is trying to  
3 help me here. Would it be accurate to say -- Would  
4 it be more accurate to address when you anticipated  
5 the possibility of a change order?

6 A. Yes.

7 Q. Would that be more correct, or would --

8 A. That's correct.

9 Q. With regards to tab two, the running black  
10 sand issue, when did you first anticipate the  
11 possibility of a change order?

12 A. Immediately upon recognizing that we had a  
13 changed condition.

14 Q. And that would have been -- I'm not asking  
15 for a specific date here.

16 A. Good.

17 Q. What I'm asking for is if you put it in  
18 some perspective when the job, so we can go back and  
19 check job records. In other words, did you  
20 anticipate this possibility when running black sand  
21 was initially excavated?

22 A. When we -- It was in the early part of the  
23 job on Building 2B. We, you know, tried to begin  
24 the work that was to be on the outside of the  
25 building. And as soon as we opened up, if you will,

1 the excavation in a couple areas, we could see that  
2 the building backfill was pouring out from  
3 underneath the foundation. So we immediately  
4 stopped and notified the Navy what we had found.

5 Q. And at that point in time, you would have  
6 anticipated the possibility of the submission of a  
7 change order request?

8 A. Sure, yes.

9 Q. Okay. Turning to tab three, the demolition  
10 of clay tile wall.

11 A. I see it.

12 Q. Can you tell me when you first would have  
13 anticipated the possibility of submitting a change  
14 order in this case?

15 A. Actually, this was one was completely  
16 directed by the Navy. As soon as the  
17 Navy must have found out that they needed more room  
18 and they wanted the additional inches that they  
19 gained by removing the interior face of the wall,  
20 they directed the change so.

21 Q. It would have been when the Navy directed  
22 the work?

23 A. Right.

24 Q. With regard to tab four, it's a curb inlet?

25 A. That also would have been when the Navy

1 directed us to do the work. I believe we had  
2 pointed out to them the problems with the elevations  
3 as drawn, which would have retained water that they  
4 didn't want to have retained on the site, so they  
5 added a curb inlet to get rid of it.

6 Q. And with tab five, I believe this is a  
7 electrical revision?

8 A. As soon as the Navy issued the change to  
9 the plans is when I recognized that I would be.

10 Q. Tab six, relief air revised?

11 A. As soon as the Navy recognized that they  
12 wanted to make a change, that's when I realized I  
13 would be getting a change order eventually.

14 Q. Tab seven, damper question?

15 A. As soon as the Navy told me I was going to  
16 change out the dampers, that's when I recognized the  
17 change order.

18 Q. Okay. And tab eight?

19 A. Again, when the Navy made the changes to  
20 the plans.

21 Q. Okay. Now, with regards to the supporting  
22 documentation for these claims, is it your testimony  
23 the work -- Excuse me. The work claimed and the  
24 amounts claimed are unrelated to any work that  
25 Sollitt had to do under the terms of the basic

1 contract?

2 A. Yes.

3 Q. So have you reviewed these claims and  
4 determined that the -- all the work constitutes  
5 additional work for which Sollitt -- additional work  
6 which Sollitt was not required to perform under the  
7 basic terms of the contract?

8 A. Yes.

9 Q. Let's turn to tab one, if you would, the  
10 additional fill claim.

11 A. Okay.

12 Q. And turn to a listing the top of which --  
13 the second page of that, according to my attachment  
14 to the affidavit, a proposal estimate for contract  
15 modifications CX 25?

16 A. Does it say CX 24 PC 25?

17 Q. That's correct.

18 A. I'm looking at the same document.

19 Q. Yes. Can you tell me who -- Excuse me,  
20 how, where, and why that document was prepared?

21 A. This is the standard format required by the  
22 Navy. They gave us this form to fill out. You can  
23 see in the bottom it's got the Navy code for this  
24 job number.

25 So the contracting officer set up the

1     format. We met. We had preapproved the amounts of  
2     markups, if you will, that a general contractor  
3     received for its self-performing the work as well as  
4     how much we would get paid for the subcontractor's  
5     work.

6                     So this form got filled out because  
7     the Navy asked us to prepare an estimate for what  
8     they called their proposed change number 25, which  
9     was to provide fill at the bathrooms, bathroom  
10    floors to make --

11            Q. Who obtained the information that was  
12    incorporated into this form?

13            A. I did.

14            Q. Did you do that personally, or was it done  
15    under your direction?

16            A. I did it personally. I was there on the  
17    job site taking the photos, documenting this changed  
18    condition. I personally sat in the negotiations  
19    with the contracting officer response to them asking  
20    for me to do this.

21            Q. Okay. Now, for instance, if you would, the  
22    claim is made an item in line eleven here for direct  
23    materials \$625, that reflects what?

24            A. That is the amount of the material that was  
25    used to fill the bathroom floors, the quantity of

1 material that was used to fill the floor.

2 Q. Okay. Where do -- In the supporting  
3 documentation to the claim, where can I derive that  
4 number?

5 A. You have to go to the next page, which  
6 would be a backup sheet, if you will.

7 Q. Right.

8 A. On the right-hand side is the material  
9 subtotals. On the page, it happens to be on the  
10 left-hand middle where it says material \$260. If  
11 you add up these subsequent pages, it might be four  
12 items, they should add up to \$625.

13 Q. I'm sorry. I'm looking at a -- Immediately  
14 behind the proposal estimate sheet I have a work  
15 authorization number 110.

16 A. I see it.

17 Q. And where does the number -- You say  
18 there's a \$260 figure on this?

19 A. It's in two places. On the far right-hand  
20 side under quantity, it goes seven, eight, seven,  
21 fourteen, thirty-six, some other numbers. And then  
22 you see the subtotal 260.10.

23 Q. Right.

24 A. That take to the left, and you'll see it  
25 rounded off to material, \$260. Part of subtotal of

1 1,116. If you take that material subtotal of 260  
2 again with the next page, which says in the about  
3 the same spot material 173, and the third page which  
4 happens to be on the right side in a very similar  
5 format, 149; material on the next page of \$43; add  
6 those four numbers together, and you will get the  
7 subtotal of 625, which was transpired to line eleven  
8 of the typed proposed change number 25.

9 MR. RIORDAN: Slow down for the court reporter.

10 BY MR. GROAT:

11 Q. Okay. Coming on down direct labor, that  
12 same adding I should be able to derive that figure  
13 same adding I should be able to derive that figure  
14 from the adding in that same column?

15 A. Essentially you have to do it the same way.  
16 Because each subcontractor does it slightly  
17 different, it had to be -- first they would estimate  
18 their work. Then they would have to put it on the  
19 form. So if you add up the labors in all the  
20 same conditions, or the same pages if you will, that  
21 subtotal would equal the two lines of 13 and 14 on  
22 the typed PC 25 recap sheet.

23 Q. 13 and 14 --

24 A. Right.

25 Q. -- so --



2           A. The recap is broken apart into a direct  
3 labor and what we call insurance taxes and fringe  
4 benefits. Those two lines total equal what the  
5 subcontractors total for the labor is on the backup  
6 sheets.

7           Q. I see. So if I add up all the labor costs,  
8 then I should get the total of lines and 15 --  
9 excuse me, lines 13 and 14 on your proposal estimate  
10 sheet; is that correct?

11          A. That's correct.

12          Q. Now, who obtained the estimates? Did these  
13 -- excuse me. Do these reflect estimates, or do  
14 they reflect invoices for work done?

15          A. I would call this -- I wouldn't call it an  
16 invoice, but I -- so I guess I would to call it an  
17 estimate.

18          Q. Is that true with the other documents  
19 supporting the proposals as to the bathroom floor  
20 fill CX No. 24?

21          A. What other line items in CX 24.

22          Q. I'm sorry. In CX 24 is the bathroom floor  
23 fill?

24          A. Correct.

25          Q. Now, you have -- As I see, we have one two

1       -- four documents which appear directly after the  
2       proposal estimate sheet?

3             A.   Yes.

4             Q.   And what are those documents?

5             A.   Additional work authorization forms.

6             Q.   Could you explain, if you would please,  
7       what a work authorization form is and when it's  
8       prepared?

9             A.   In this instance, this work authorization  
10       form is the subcontractor filling out people that  
11       had worked; their names, their trade, their hours,  
12       the rate he wants to receive for their services, and  
13       the estimate of the quantities of materials that he  
14       used.

15            Q.   Now, were these estimates, or were they  
16       invoices for work actually performed?

17            A.   I believe at the time they were created  
18       they were estimates.

19            Q.   Now, there's a reference here to actual --  
20       On these estimates then there's a reference in the  
21       first page under labor there's a column -- actually,  
22       two columns under the actual hours worked, straight  
23       time and premium time. Can you tell me what that  
24       means -- refers to, please?

25            A.   Well, the straight time would be the labor

1 rate that they would be reimbursed at. Straight  
2 time being less expensive than premium time. And I  
3 can see that the -- the actual hours worked -- And  
4 that's I guess why I think they're estimates in one  
5 case. I could see it's changed from an eight to a  
6 six. Eight might have been the estimated hours. Six  
7 might have been the actual hours.

8 Q. Could you clarify where that is, please,  
9 the change from eight to six?

10 A. The third page.

11 Q. And can you indicate where on the sheet  
12 that is? Understand there will only be a written  
13 record, so if you could describe for the court  
14 reporter where it appears on the sheet.

15 A. Under the actual hours worked under the  
16 column straight time, there appears to be the eight  
17 crossed out under the next two lines and changed to  
18 a six for actual straight time -- well, actual hours  
19 worked.

20 Q. I have the sheet labor -- The sheet that  
21 I'm looking at reads name HG, and under that Jim D.?

22 A. Correct, I see that.

23 Q. And where do we have it crossed out from --

24 A. Just move to the right, the next column is  
25 trade. The next column says actual hours worked.

1 In the straight time portion of that, you can see  
2 that the eight had been changed to a six.

3 Q. I see. So it's -- And now -- There's a  
4 reference here to premium time as well. Can you  
5 clarify what that refers to?

6 A. Actually, this work was performed on  
7 premium time. The filling out of this form  
8 apparently isn't filled out 100 percent correctly.  
9 It's -- But I can see that it's s hours times the  
10 premium time rate of \$48 and I'm not sure how many  
11 cents on this line item, equals the 291 that's next  
12 to it. Then he takes the 291, he adds it to the  
13 next 291 line item for Jim D. Bill W. Worked six  
14 hours at \$40.75, again a premium time rate,  
15 which equals \$244. He adds up the totals to get  
16 that \$1,071 on this sheet.

17 Q. Okay. Now, I guess I'm somewhat confused.  
18 I thought you indicated before that these work  
19 authorization forms were in the form of estimates.  
20 Is it your testimony that this reflects an invoice  
21 for work performed?

22 A. Well, you asked me when they were prepared  
23 if I thought they were estimates, and I said yes  
24 because I believe it's changed from an estimate to a  
25 verification, if you will, of which the

1 superintendent ultimately signed and verified that  
2 this much work was performed. So when it was  
3 prepared, I think it was an estimate. What it became  
4 was the verification.

5 Q. Now, what indication on there -- these  
6 sheets is there that the -- the superintendent  
7 verified that the work was done?

8 A. Let's go back to the first page following  
9 the typed PC 25. That -- That handwritten  
10 signature, it's kind of blocked out, but it's on the  
11 bottom. If you can make out, it says Albert  
12 Lindstrom, III. One, two, three you can see in  
13 Roman Numerals.

14 Q. Yes.

15 A. That's one of the superintendents we had on  
16 the job site that signed this piece of paper  
17 verifying that this work was performed.

18 Q. Now, Mr. Lindstrom was your employee?

19 A. Yes, he was.

20 Q. Do you know, in fact, whether Northern  
21 Illinois Terrazzo & Tile company submitted an  
22 invoice in this amount to Sollitt  
23 for payment?

24 A. Yes, I do know that to be true. And it's  
25 been paid.

1 Q. And how do you know that?

2 A. Because I personally paid them, and I went  
3 through all their invoices personally.

4 Q. Are there additional records that would  
5 show that these invoices have actually been paid?

6 A. Yes, there are.

7 Q. Okay. Let's turn to tab two, if we could,  
8 please? I would like you to turn to the sheet again  
9 immediately after the claim letter, the proposal  
10 estimate for contract modification sheet. Could you  
11 explain, if you would please, how the figure in line  
12 one, direct materials, is computed?

13 A. Back when -- As I started this, this is the  
14 running black sand CX 39 proposal, as soon as we  
15 found the changed condition in that if we proceeded  
16 with the work the sand that the building was  
17 backfilled would run out from the foundation causing  
18 collapsing of the floors, et cetera, we brought that  
19 to the attention of the architect and the engineers  
20 and the Navy.

21 Overall a long period of time, we  
22 could not get any direction from the Navy or the  
23 architect. In fact, the architect just gave up on  
24 trying to resolve this issue on the Navy's behalf.  
25 Ultimately, Matt Stahl from the Navy gave us a

1 sketch of the work that would most likely solve the  
2 problem. And we took his sketch, applied it to the  
3 blueprints, and estimated the material cost from  
4 that document -- from those documents.

5 Q. Tell me, if you would, how the -- how I  
6 actually -- where can I go and derive the figure  
7 \$21,310?

8 A. The second page shows, immediately  
9 following the page we were on, \$21,310 under the  
10 material cost. After the credit for the original  
11 design is subtotaled and given back, then the add for  
12 the added work and the net total is 21,310.

13 Q. Okay. And the 21,310 figure, is that  
14 computed on the appended sheets, the recapitulation  
15 of the general estimate?

16 A. It's recapitulated here on this sheet that  
17 I was on, not from the general estimate.

18 Q. Well, how would I -- How would I go back  
19 and derive the \$21,310 figure?

20 A. You would have to go back and look at the  
21 original credit for 18,394, add the revised design  
22 of 39,704, and then you would get the net of 21,310.

23 Q. I'm sorry. How can I derive the number  
24 39,704?

25 A. You would go about two sheets -- Let's see.

1 -- two sheets in to find the labor and material  
2 breakdowns; labor being 42,703,  
3 material being 39,704.

4 Q. Is this on the appended sheet with the  
5 caption recapitulation of general estimate?

6 A. Yes, it is.

7 Q. And the labor figure, which I take it are  
8 lines three and four?

9 A. Correct.

10 Q. How did you derive that line?

11 A. The same way essentially. You have to use  
12 the second sheet, which shows the credit and the  
13 add, and then take it back further to see the  
14 breakdown of both of those lines in the  
15 recapitulation of general estimate sheets.

16 Q. And the general estimate sheet was for  
17 \$42,703 for labor; is that correct?

18 A. For the added work, yes, that was the  
19 total.

20 Q. With regards to line 22, the profit is  
21 claimed for subcontractors. How do I derive that  
22 information?

23 A. Well, line 22 does have the word profit,  
24 but zero is the amount across from that line item.  
25 What this cell in the electronic spreadsheet really



1 shows is that underneath the word profit is a  
2 subcontractor named Beer Gorski & Graf Engineering,  
3 they got paid 120. The word profit doesn't have  
4 anything to do with it.

5 Q. This is the actual -- These are the  
6 invoiced -- Excuse me. This is the claimed cost --  
7 the estimated cost by the various subcontractors?

8 A. Claimed estimated and paid final costs.

9 Q. For instance, with Flood Testing, how do I  
10 derive the figure?

11 A. Are you asking how do I get to the Flood  
12 Testing cost of 3,933?

13 Q. That is correct.

14 A. Flood Testing was paid on a unit basis, so  
15 the second -- I guess it's all the way in the back.  
16 The last two pages are the Navy form of the Flood  
17 Testings cost.

18 Q. I didn't understand your response. Could  
19 you clarify how Flood Testing was paid?

20 A. On the basis -- Of this extra he was paid  
21 on the basis of man hours worked that -- he was --  
22 Flood Testing was paid upon the man hours worked  
23 based upon the last two pages of this estimate.

24 MR. RIORDAN: Jack, I don't know if he was  
25 clear that -- He's looking at the last two pages of

1 the documents under that tab.

2 MR. GROAT: I understand.

3 THE WITNESS: Okay.

4 MR. GROAT: I'm looking at the right pages. My  
5 silence is only due to my lack of knowledge here,  
6 not anything else.

7 MR. RIORDAN: Okay.

8 BY MR. GROAT:

9 Q. How do I -- How do I actually know that  
10 Flood Testing was paid \$3,933 based on these  
11 documents?

12 A. He was paid a greater amount for performing  
13 all the services -- all the testing services on our  
14 job. Again, when we put together this -- this  
15 portion of the claim, it's based upon the quantities  
16 of concrete, work that needed to be performed, and  
17 this is just a portion of how much he's totally been  
18 paid on the job.

19 Q. Well, my understanding is that you prepared  
20 the claim for running black sand, and you included  
21 in it various -- the moneys paid to various  
22 subcontractors; is that correct?

23 A. Yes.

24 Q. And the -- your document indicates that  
25 Flood Testing was paid some \$3,933?

1           A.    Yes.

2           Q.    Now, how do I -- From the documents before  
3 me, how do I determine that Flood Testing was paid  
4 \$3,933?

5           A.    Other than this is the estimated cost for  
6 the work associated with this change, it's merely a  
7 subtotal of the overall he's got paid. There's no  
8 direct correlation.

9           Q.    I'm still confused. The figure that I see  
10 on the last page under a breakdown of direct costs  
11 -- Excuse me, an estimate with a reference to Flood  
12 Testing is a figure of some \$3,240?

13          A.    Correct.

14          Q.    But I see that you're making a claim for  
15 some \$3,933?

16          A.    Well, that's merely because the 3,240 is  
17 the subtotal of his labor which got marked up by  
18 over -- field overhead, home office profit, whatever  
19 the entitled preagreed Navy amounts are. I mean,  
20 that's --

21          Q.    That would reflect then a marked up figure  
22 for Flood Testing; is that correct?

23          A.    That's correct.

24          Q.    And it's your testimony that the markup  
25 from the three twenty forty as shown to the three

1        ninety-three thirty-three was based upon an agreed  
2        upon formula?

3            A.    Yes, it is.

4            Q.    Now, is that agreed upon formula, does that  
5        include your overhead in managing the  
6        subcontractors?

7            A.    Yes.

8            Q.    Well, then if you would continue down on  
9        the proposal and estimate sheet, an additional claim  
10       is made for the prime overhead on subcontractor of 5  
11       percent in line 27?

12           A.    That's correct.    However, what we did in  
13       this case was take the 3,933, move it all the way to  
14       line 22, the last of the subs.    It subtotals there,  
15       and then we marked up on the front cover sheet.

16           Q.    When you say you mark it up on the front  
17       cover sheet, which sheet is that?

18           A.    The second sheet from this exhibit.    I  
19       believe it's the typed estimate for contract  
20       modifications, CX 39 running black sand, line 22.

21           Q.    On line 22, I --

22           A.    Last --

23           Q.    On line 22 you've included --

24           A.    3,933 and the last subcontractor noted.

25           Q.    That's correct.

1           A. And then after that lines 24 through 32  
2 mark up that amount in the preapproved formula.

3           Q. What you're telling me today, as I  
4 understand it, is that the 3,933 number has already  
5 been marked up according to a preagreed upon  
6 formula?

7           A. The subcontractor is entitled to a  
8 preapproved markup in accordance with the Navy  
9 formula. I too am allowed a preapproved markup on  
10 top of the subcontractor's final amount.

11          Q. Well, how much did -- How much did Sollitt  
12 pay Flood Testing for the work performed?

13          A. Flood Testing has been paid a total amount  
14 providing all the services on the job. I've  
15 estimated that it took this much time, 3,933, to be  
16 attributable to this change.

17          Q. I must be very slow this morning, but  
18 please bear with me.

19                 We have the 3,240 figure representing  
20 a breakdown of direct costs. And are you saying  
21 those are direct costs -- Perhaps we could clarify  
22 it.

23                 With regards to the last sheet in tab  
24 two, can you explain what that sheet which is at the  
25 top labeled breakdown of direct costs refers to?

1           A. Okay. It's the breakdown of the direct  
2 costs. That labor that's been expended for  
3 inspections of the concrete cylinders, picking them  
4 up, et cetera, totals \$3,240. Much like if a  
5 carpenter did work in the field and got paid his  
6 base rate, that's what this would be equivalent to.

7                       So \$3,240 is transferred just like it  
8 would be for a carpenter in a different case to line  
9 13 direct labor. That's the direct labor. He's  
10 entitled to get a markup and overhead and a profit  
11 hopefully that would equal the total of 3,933 all in  
12 accordance with the contracting officers, you know,  
13 forced way to do contract modifications. I had to  
14 do it this way. This is the way I do`them all, the  
15 ones that the approve and the ones they don't pay me  
16 on.

17           Q. So Flood Testing was at -- What was the  
18 relationship between Flood Testing and Sollitt on  
19 the site?

20           A. He's a subcontractor of mine.

21           Q. And how did they bill, and how were they  
22 paid?

23           A. Where they're paid, from their invoices.

24           Q. That's -- That's very helpful. Where is  
25 the invoice that would cover this work?

1           A. I don't -- I don't know.

2           Q. Would normally there be an invoice for this  
3 type of work?

4           A. We -- The work that we did, George Sollitt,  
5 was self-performing all the concrete work as an  
6 example. And if he performed testing services for  
7 that concrete work, it's in his monthly bill.  
8 Whether he took a concrete cylinder from this exact  
9 location versus some other part of the job, there is  
10 no breakout of that.

11          Q. You said there's no particular invoice that  
12 would direct this work; is that correct?

13          A. There is no particular invoice to this --  
14 No, there is not.

15          Q. Who -- who -- The sheet that we're looking  
16 at, breakdown of direct costs, who prepared that  
17 sheet?

18          A. I did.

19          Q. And that was based upon what?

20          A. It's based upon the -- the work that was  
21 needed to be performed for the change that the Navy  
22 drew up and had me apply to their  
23 drawings.

24          Q. Okay. And how did you calculate the  
25 breakdown of direct costs on that -- that sheet?

1           A. Because, again, they're doing this work for  
2 me in the rest of the job, it wasn't that hard to  
3 include a certain amount of man hours of the work  
4 that would be required for this change.

5           Q. So, for instance, maybe we can clarify  
6 this. We have Flood Testing, preinspection, a 24  
7 MH. To what that does that refer?

8           A. It means that they came out to work on our  
9 site for 24 man hours. It could be a man for three  
10 days.

11          Q. And this was an estimate, is that correct,  
12 that you prepared prior to the work being performed?

13          A. Yes.

14          Q. What, if any, records are there of the  
15 actual work Flood Testing performed?

16          A. Well, I should correct that in the sense  
17 that the preinspection, again when the architect  
18 couldn't provide us a change, we did consult with  
19 people -- Flood Testing happens to be one of them --  
20 who came to our job and tried to help us figure out  
21 what the solution should be. So in that one line  
22 item in particular, I guess that was performed

23 before the total estimate was completed.

24          Q. Well, as I understand it then, you prepared  
25 this estimate of Flood Testing's -- the amount of



1 work that would be required by Flood Testing or the  
2 amount of work that was performed by Flood Testing;  
3 is that correct?

4 A. Yes.

5 Q. What, if any, records did Sollitt maintain  
6 concerning the amount of work that Flood Testing did  
7 in connection with this -- the change order request?

8 A. I'm not sure, but I -- there's -- I'm sure  
9 they're available.

10 Q. And where would those -- What type of  
11 records would have been maintained that would allow  
12 you to take a look at that?

13 A. Well, it would be phone logs. It would be  
14 daily work reports that these guys were on the job  
15 site. This issue lasted, you know, for almost --  
16 maybe more than a year. There's all kinds of  
17 conversations. Reports that were even actually given  
18 back to the Navy saying what Flood Testing said.  
19 And the Navy has got them all too. They're the ones  
20 who wanted us to do this work.

21 Q. Let me go to the breakdown of direct costs  
22 that appears directly after the proposal and  
23 estimate sheet?

24 A. You got to locate me again. I'm not  
25 following you.

1 Q. This is the third page of tab two in my  
2 copy of the declaration.

3 A. The third page would be the --

4 Q. The page I have here at the top reads  
5 breakdown of direct costs. Underneath that appears  
6 CX 39 running black sand.

7 A. Okay. I have it.

8 Q. There's an item there under prime work  
9 items, QC manager. Can you tell me what that refers  
10 to?

11 A. Yes. The quality control manager was a  
12 separate program which we had to hire someone to  
13 perform this service for the regular contract work.  
14 This quality control manager was also used to look  
15 at and try to help figure out what should be the  
16 solution to -- to the running black sand running  
17 pouring out from under the building.

18 Q. Now, my understanding is that the  
19 contractor required Sollitt have a quality control  
20 manager on site continuously; is that correct?

21 A. Yes.

22 Q. What additional cost did Sollitt incur  
23 regarding the quality control manager relative to  
24 Sollitt's changed proposal number 39?

25 A. I don't know. I would have to refresh

1       myself on how he was compensated.

2           Q.   I'm sorry?

3           A.   I don't know the answer to that question.

4       I would have to review how the quality control  
5       manager was compensated.  He may very well have  
6       billed us separately for this work.

7           Q.   Would there be records that would show how  
8       he was paid and compensated?

9           A.   Probably.

10          Q.   What type of records would those be?

11          A.   His invoices.

12          Q.   Well, would his -- In going in further on  
13       this line, there's a quantity unit 100 man hours.  
14       How did Sollitt compute that time, that 100-hour  
15       figure?

16          A.   I would say that was estimated on the basis  
17       of the length of time that we knew we were  
18       conversing with the quality control manager  
19       regarding just this issue.

20          Q.   Okay.  You say there may be -- there may be  
21       documents that would show specifically how the  
22       quality control manager was compensated; is that  
23       correct?

24          A.   Yes.

25          Q.   Would there be documents that would show

1       how the quality control manager was allocating his  
2       time that would permit a calculation of the amount  
3       of time that he actually spent on what Sollitt has  
4       called proposal CX 39?

5             A.   Probably not.

6             Q.   Could those records have been maintained?

7             A.   I don't know.

8             Q.   Well, under whose -- Who -- Were you in  
9       charge of the project site for Sollitt?

10            A.   I was the project manager.

11            Q.   Did the quality control manager report to  
12       you?

13            A.   We were in parallel positions.

14            Q.   In Sollitt -- As far as the -- As far as  
15       the managerial responsibilities on the site, could  
16       you direct the quality control manager to take  
17       certain actions in -- in -- give your position as  
18       project manager?

19            A.   I guess I could direct him to do -- to do  
20       things, yes.

21            Q.   Could you have, for instance, told the  
22       quality control manager to maintain records of his  
23       time that were incurred as the result of the running  
24       black sand issue?

25            A.   I could have.

1 Q. And why didn't you?

2 A. I guess I didn't see a need for it.

3 Q. Well, let me see -- Let me turn to the next

4 page of the estimate, a recapitulation of the

5 general estimate.

6 A. I'm there.

7 Q. And if you could, just read down that list.

8 I can make out, I think, the first item under --

9 under item description. It's hand?

10 A. Excavation.

11 Q. That refers to what?

12 A. Work that needed to be performed by hand,

13 not with a machine.

14 Q. I see. And the next item is?

15 A. Wall forms.

16 Q. And that refers to what?

17 A. Forming material to pour concrete up

18 against.

19 Q. Now, there's a labor claim there of some

20 \$8,865; is that correct?

21 A. That happens to be a credit for that much,

22 yes.

23 Q. I see, a credit for that much. I see. So

24 that's a different procedure that was followed?

25 A. Again, we credited back a certain amount of

1 the net total, and we added the revised work. This  
2 happens to be the credit.

3 Q. How would I compute that, all forms? How  
4 would I go and get that -- derive that figure 800 --  
5 \$8,865?

6 A. Well, you would derive it from taking the  
7 quantity of 1,970 square feet times the unit cost of  
8 \$4.50.

9 Q. Where do I get the quantity of 1,970 square  
10 feet?

11 A. You go back to the blueprints, use the  
12 sketch that Matt Stahl gave us, and take it off.

13 Q. So you derived this 1970 square foot figure  
14 from Matt Stahl's sketching -- sketch?

15 A. And the blueprints, correct.

16 Q. Now, continuing on down --

17 A. Jack, I have to correct myself. I hate to  
18 even go back and say this. But because this is the  
19 credit proposal, that's the original blueprints that  
20 you derive it from. It's only on the add that you use  
21 Matt Stahl's sketch with the new blueprints.

22 Q. I see. Now, with regard to the  
23 recapitulation of the general estimates, when,  
24 where, and how is this document prepared?

25 A. After we got the sketch from Matt Stahl,

1       which was a long time in coming and it was our best  
2       way that we could come up with, the Navy and  
3       ourselves, to stop the sand from rolling out from  
4       under the building, we applied that sketch to the  
5       blueprints. And we estimated it.

6             Q.   And who prepared the estimate?

7             A.   Overall I did.  I did most of the work on  
8       it.

9             Q.   Well, in whose handwriting is this document  
10       prepared?

11            A.   The upper part is mine; the lower part  
12       appears to be Howard Strong's; and the math  
13       subtotals appears to be mine.

14            Q.   Now, Howard Strong was at the site when he  
15       derived these figures, or would this have been  
16       something that he would have done back at the  
17       Sollitt's offices?

18            A.   Howard was at the job site pretty often.  
19       He probably did his estimating from the office.

20            Q.   And one of my questions was, when was this  
21       sheet prepared?

22            A.   About the time we got the sketch from Matt  
23       Stahl.

24            Q.   And was this presented to the Navy as an  
25       estimate of the amount of work that would be

1 required to implement the change?

2 A. Yes.

3 Q. And it was submitted to the Navy as --  
4 based as an estimated cost of performing the work;  
5 is that correct?

6 A. Yes.

7 Q. And if you would go back -- If you would go  
8 one further back and look at the recapitulation of  
9 general estimate sheet, it appears to be prepared in  
10 the same handwriting. Can you tell me what that  
11 sheet refers to?

12 A. This one is for the added work required by  
13 the sketch that we received from the Navy.

14 Q. And who prepared this sheet?

15 A. Again, the upper portion is my writing, and  
16 the lower portion is Howard Strong's writing.

17 Q. Were there any -- Were there any records  
18 prepared by Sollitt in the course of preparing this  
19 estimate, this sheet? Were there any records  
20 prepared?

21 A. Not records prepared for this sheet in  
22 particular, but records, yes, for the overall issue.

23 Q. My lack of familiarity at estimating shows  
24 through here.

25 Is the estimating process actually



1 reflected on this particular sheet? Were there --  
2 Are there other sheets and documents that were  
3 prepared and the numbers then moved to this sheet?

4 A. Well, everybody works a little differently,  
5 but I could see that these numbers were probably  
6 derived from putting a scale to the blueprints. And  
7 the square footages, you know, many times are  
8 written right there, length times width equals  
9 square feet.

10 And this and that would be  
11 the only two documents I could think  
12 of.

13 Q. Are you aware of any other documents that  
14 would reflect how the estimate as prepared?

15 A. This page, no, I'm not.

16 Q. There's one item -- I'm going down about  
17 ten down. I believe in reading it, it says fine  
18 grade, an item of \$4,130. Can you tell me what that  
19 refers to?

20 A. Fine grade actually is in square feet and  
21 not dollars. That 4,130 is square feet. The  
22 dollars are \$2,065.

23 Fine grading is the process that  
24 takes place prior to pouring the concrete. So you  
25 level out the ground, if you will.

1           Q.   So this would have been subsurface work  
2 prior to a pour?

3           A.   Yes.

4           Q.   And what is the item underneath that?

5           A.   Two layers of one-inch insulation at the  
6 wall, which is typical of a -- typical a sketch and  
7 stops frost from penetrating and making the inside  
8 floor cold.

9           Q.   And underneath that it says -- to me it  
10 reads, mass six-inch wall? Underneath the two lines  
11 under fine grade?

12          A.   Oh, I see it. I'm trying to interpret that  
13 one word too. It could say place. Think it's place  
14 six-inch walls.

15          Q.   Well, there's a \$13,000, -- \$13,170 in  
16 material claimed for that; is that correct?

17          A.   Yes, that is. That would be the -- the  
18 wall material, the concrete for the wall  
19 material.

20          Q.   And could you continue under and tell me  
21 what these items refer to, form curb something?

22          A.   Form curb at the abbreviation for masonry,  
23 MAS, period.

24          Q.   I see. And what does that refer to?

25          A.   On the sketch there was a concrete curb

1       that be needed to be formed one side that must have  
2       been adjacent to the masonry.

3           Q.   Now, when were these documents -- or were  
4       these documents presented to the Navy?

5           A.   Well, the overall final cost, September 18,  
6       1996.

7           Q.   And are you referring back to the  
8       submission of the claim letter?

9           A.   Yes, I am.

10          Q.   Were these supporting documents provided to  
11       the Navy at that time, do you know?

12          A.   Yes, they were.

13          Q.   Had the work at that time been performed?

14          A.   I think so.

15          Q.   What, if any, records did Sollitt keep as  
16       to the amount of time and amount of material it  
17       actually expended in performing this work?

18          A.   Well, the amount that we requested is  
19       really the way we do most of these proposals. We  
20       apply the quantities -- or take off the quantities  
21       from the drawings. We self-performed a certain  
22       amount of this work, and it's really buried in the  
23       overall cost. Don't think we have any actual  
24       breakout costs for these line items we're looking  
25       at. These are the estimates that we would prepare

1       for any -- like any other change that the Navy asked  
2       us to price.

3           Q.   Okay.  Why did Sollitt -- Is it your  
4       testimony that Sollitt did not maintain any records  
5       of the actual time and material expended completing  
6       this change?

7           A.   That's correct.

8           Q.   Why did not -- Why didn't Sollitt maintain  
9       records of its actual time and material expended in  
10      completing this change?

11          A.   Because this is the typical way that the  
12      Navy had trained us to -- to provide them proposals  
13      that could get turned into change orders, is to use  
14      the drawings to estimate the quantities.  That's the  
15      only thing they would accept.  They were 100 percent  
16      against trying to go time and material, if you will.

17          Q.   Did anyone from the Navy direct you not to  
18      maintain records of the actual time and material  
19      expended?

20          A.   They did tell me that time and material was  
21      not the preferred way to perform work and that we  
22      would always have to provide the estimates and the  
23      backup documents as we did here.

24          Q.   Now, who told you that and when?

25          A.   More than once and all three contracting

1 officers that I can think of. Lieutenant Corsello,  
2 Odorizzi -- I can't think of the third guy's name.

3 Q. And they told you this with regards to your  
4 submission of proposals; is that correct?

5 A. Yes, right. In general that's exactly how  
6 they wanted it to be. And this one happened to come  
7 after all the other change orders which I had been  
8 doing just like this, so this was the preferred  
9 method by the Navy to get it turned into a change  
10 order.

11 Q. Let's turn to tab three, clay tile walls.

12 A. I'm there.

13 Q. We have -- On the proposal and estimating  
14 sheet on this claim item, we have a subtotal for  
15 National Wrecking of \$32,335. Can you tell me how  
16 that figure is derived?

17 A. From the next sheet, this is the  
18 handwritten contract modification sheet that  
19 National Wrecking filled out. Again, it's the same  
20 exact Navy form, and that is the amount that -- that  
21 was agreed to with the contracting officer. In the  
22 lower, right-hand corner, you can see I've got --  
23 And this is my handwriting. It says deal, 2-7,  
24 which is t date, without, w/o, without Joe Naumes.  
25 And I made a deal with the contracting officer that

1       this was the cost. I have no idea why they reneged  
2       and didn't pay us this full amount.

3             Q. And you made a deal with whom, you know,  
4       when -- And give me the particulars, if you would,  
5       concerning the --

6             A. Again --

7             Q. -- this particular claim?

8             A. -- I'm sitting in a negotiation, if you  
9       will, with the contracting officer. We This  
10      document may not represent everything or how long  
11      we've been working on trying to get this one change  
12      approved. This is the final document. And we  
13      agreed to this amount. I write the words deal 2-7  
14      without Joe Naumes. He's not present. The  
15      contracting officer and myself negotiated this  
16      amount to be the final approvable amount for the  
17      Navy proposed change to take out the clay tile wall  
18      from Building 2B.

19            Q. Okay. Now, who is the contracting officer  
20      at that point in time?

21            A. I believe it was Lieutenant Corsello.

22            Q. Can you say that with certainty or not?

23            A. Yes, I can, Lieutenant Corsello.

24            Q. And without Joe Naumes refers to what?

25            A. Joe Naumes wasn't physically present at

1       this final negotiation.

2             Q.   And, I'm sorry, who was Joe Naumes?

3             A.   Joe Naumes is the project manager for the  
4       National Wrecking Company.

5             Q.   Let me turn to tab four, curb inlet.  
6       Looking at -- Sollitt here has made a claim for  
7       direct cost. How do I derive Sollitt's labor and  
8       equipment costs?

9             A.   Well, the second sheet shows the line item  
10       three as the direct labor cost being \$768. The next  
11       sheet backs that up in that we asked for 32 man  
12       hours at \$24 an hour equals \$768 for labor.

13            Q.   Did Sollitt -- Did this represent an  
14       estimate of Sollitt's labor and equipment costs?

15            A.   Yes.

16            Q.   What, if any, record did Sollitt maintain  
17       of its actual labor and equipment expenses?

18            A.   We did not. We do not have this  
19       segregated, to the best of my knowledge.

20            Q.   Now, turning to subcontract A & H Plumbing.  
21       Where do I derive the claim on behalf of A & H  
22       Plumbing?

23            A.   The subcontractor filled out his own NAVFAC  
24       estimating form, is what they called this. He  
25       filled out the form. These pages that continually

1 go behind tab four, yo can see that the Navy  
2 reviewed his work and that they had -- Maybe we  
3 should get on the same page together.

4 I'm on the one that's got a lot of  
5 handwritten notes on it, and it's back about almost  
6 the last page of tab four.

7 Q. Is this George Sollitt Construction Company  
8 at the top, and at the top, left-hand corner it's  
9 Tony and A & H?

10 A. I don't think that's the right sheet.

11 Q. In the top, left-hand corner?

12 A. Try the last sheet in Exhibit 4, and it  
13 should have a lot of handwriting on it.

14 Q. Yes, I have that last sheet. This refers  
15 to -- At the top it reads contract number  
16 N62476-4-C-0971 with a date of 11-10-95?

17 A. We're looking at the same document.

18 Okay. And this is how I could  
19 explain A & H's proposal. He originally submitted  
20 it with the far right equipment as \$1,080. The Navy  
21 writes back and says -- they circle that 1.5 and  
22 write three to four yards.

23 Tony writes back -- Tony from A & H  
24 Plumbing writes back that he can adjust this to one  
25 day, and he changes that amount.



1                   The Navy in other places wrote as an  
2                   example it circles the material cost and say --  
3                   That's the Navy's writing. -- Inlet with curb frame  
4                   and grade -- Oh, excuse me. The one that says not  
5                   installed per Navy is my handwriting based on the  
6                   Navy comments of this proposal.

7                   Tony writes back from A & H Plumbing  
8                   that the inlet with the curb frame and grade is  
9                   installed and he would not remove that from the  
10                  estimated cost.

11                  Again, the Navy -- in my handwriting  
12                  what the Navy is asking me to challenge the 15 yards  
13                  of dirt that he's asking for under machine and  
14                  operator. Tony writes back that there were 15 yards  
15                  of spoil removed is correct. He says the connection  
16                  to the existing age storm was quite deep, so --

17                  THE COURT REPORTER: Connecting what storm, I'm  
18                  sorry?

19                  THE WITNESS: Storm, as in storm line was quite  
20                  deep.

21                  So after negotiation with the Navy,  
22                  Tony did revise the total, as it says in the bottom,  
23                  the labor and material subtotal was changed to  
24                  \$3,752. And that's my understanding of the  
25                  subcontractor's proposal.

1           Q.   Okay.  Now, is it 3,752 then would be the  
2   contractor figure which you've previously discussed  
3   being based by certain agreed upon multiples?  How  
4   do I derive the figure of \$4,188, which appears in  
5   line 23 of the proposal and estimate?

6           A.  It appears to me to be an error.  I think  
7   that line 23 might have been the old number and that  
8   it should have been revised to 3,752.  That's what  
9   it appears to me.

10          Q.  Now, how would I -- How would I -- How  
11   would I go ahead and verify what Sollitt actually  
12   paid --

13          A.  You would --

14          Q.  -- A & H Plumbing?

15          A.  There's a change order written for the --  
16   the amount that matches up against this Navy  
17   proposed change.

18          Q.  Would there be a change order in Sollitt's  
19   files reflecting?

20          A.  Yes, there would be.

21          Q.  Now, previously you had indicated to me  
22   that -- that you were relying on the fact -- with  
23   other claims you were relying on the fact that you  
24   had the invoice and you knew the invoice was -- You  
25   know, what would have caused you to prepare the

1 claim in this case of the \$4,188 versus the 3,070 --  
2 \$3,752 shown on the invoice?

3 A. I would have to go back and look up some  
4 more records to answer that question. There must  
5 have been a very similar form with an equal 4,188  
6 submitted by A & H Plumbing.

7 Q. Let's turn to tab five?

8 A. I'm there.

9 Q. Underline 22 profit appears Jupiter premium  
10 time and Jupiter. Can you tell me what that refers  
11 to?

12 A. These are the cost proposals from Jupiter  
13 Electric Company to perform the changed electrical  
14 work per the Navy's amendment 19.

15 Q. Now, I would like you to turn to the  
16 amended sheets. The pricing sheets appear at the  
17 back of this tab and explain what they  
18 are?

19 A. This is the estimated quantities taken off  
20 from the drawing noted as amendment 19.

21 Q. Okay. How much did Sollitt actually pay  
22 Jupiter this work?

23 A. I would have to verify it, but I presume he  
24 got a change order for the complete amount.

25 Q. Why do you say you presume he had a change

1 order for the complete amount?

2 A. Because at this point in time when this is  
3 the cost of the work to the subcontractor, that's  
4 the amount we would pay him.

5 Q. Okay. Did you go -- or has Sollitt gone  
6 back in this case and determined whether the amount  
7 claimed is the actual amount Sollitt paid?

8 A. I haven't personally, but I've -- You know,  
9 if history is any judge, that's exactly what they  
10 got paid on all proposals, what they asked for.

11 Q. In preparing these -- Presumably then there  
12 would be records of Sollitt's that would show the  
13 amount Sollitt actually paid Jupiter on this claim?

14 A. Yes.

15 Q. And those aren't appended to your  
16 declaration; is that correct?

17 A. No.

18 Q. Now, with regards to the, a claim here for  
19 premium time, explain to me, if you would, the basis  
20 of that item?

21 A. Just that this electrical work had to -- or  
22 some of it had to be performed on a premium time  
23 basis. The Navy that's -- they wanted to address  
24 that in a separate proposal. That amount was  
25 \$1,398, but I believe the Navy unilaterally paid us

1 quite a bit less than even the estimated cost.

2 Q. Now, Sollitt has made claims for -- other  
3 claims for alleged required overtime. What, if any,  
4 steps have been maintain -- taken to ensure that  
5 there is not a claim -- an additional claim for this  
6 particular time sought?

7 A. Well, we have to be aware and cognizant of  
8 that and just don't duplicate the premium time cost.

9 Q. Do you know if that's been done in this  
10 case?

11 A. Yes.

12 Q. And how do you know that?

13 A. Because I'm the guy who put together  
14 essentially all of the proposals.

15 Q. You indicated that premium time was  
16 required in this case. Do you know whether, in  
17 fact, that the work Jupiter performed was on a  
18 critical path?

19 A. I do know that; and, yes, it is and was.

20 Q. So this particular item, it's your  
21 testimony that this particular item was in the  
22 critical path?

23 A. Yes.

24 Q. And at the time the work was performed it  
25 was on a critical path?

1           A.   Very much so.

2           Q.   So this was the -- This at the time it was  
3 performed was the -- the one item which dictated  
4 whether or not the schedule could be  
5 maintained?

6           A.   Just one more item.

7           Q.   Is it your testimony that there was several  
8 items on a critical path when Sollit submitted its  
9 claim?

10          A.   Yes, there were several items on a critical  
11 path.

12          Q.   And how did you determine that?

13          A.   Well, this one in particular is because  
14 this is, I believe, the tail end of the electrical  
15 work being added to the ships trainer, which the  
16 ship's trainer activities were on a critical path.  
17 Adding more electrical work to that same critical  
18 path is how I determined that.

19          Q.   And where could I go to determine the  
20 amount that Jupiter was actually paid for this work?

21          A.   I would start with the change order log.

22          Q.   Now, those documents are not appended to  
23 your declaration; is that correct?

24          A.   No.

25          Q.   It would be possible then based from

1 Sollitt's records to determine the amount paid?

2 A. Yes.

3 Q. Let's turn to tab six, relief air?

4 A. I'm there.

5 Q. Turn to the breakdown of direct cost sheets  
6 appended to the claim.

7 A. Yes.

8 Q. Who prepared that sheet?

9 A. I did.

10 Q. And what was that based on?

11 A. The amount of additional work required by  
12 proposed change to number 63.

13 Q. Did Sollitt maintain records of the actual  
14 time expended in performing this work?

15 A. We don't have it segregated.

16 Q. If you would turn to the next page, a  
17 proposal by CSM Corporation?

18 A. I have it.

19 Q. And could you explain what that is?

20 A. This is essentially the -- the cost to do  
21 the work to provide revisions to the a duct system  
22 to provide relief air to the building as requested  
23 by the architect and the Navy.

24 Q. Does Sollitt have any records that would  
25 show the amount actually paid in this particular

1 invoice?

2 A. Yes, we do.

3 Q. Let's turn to tab seven, dampers question.

4 A. I'm there.

5 Q. Now, again, we have estimates in this case  
6 by the subcontractors. Does Sollitt have  
7 documentation that would show the amount actually  
8 paid on these, paid to these subcontractors?

9 A. Yes, we do. And I have no reason to  
10 believe that they're not the exact amounts listed in  
11 this proposal.

12 Q. And let me turn to tab eight, which refers  
13 to complete steel plates.

14 A. I'm there.

15 Q. Again, referring to the breakdown of direct  
16 costs, does this refer estimates prepared by  
17 Sollitt?

18 A. Yes.

19 Q. And does Sollitt have any records of the  
20 actual time expended?

21 A. It's not segregated.

22 Q. And I would like you to refer to the final  
23 document in your declaration, which I believe is by  
24 the subcontractor in this case.

25 A. I see it.



1 Q. Does Sollitt have records of the amount --  
2 Does this reflect the amounts Sollitt actually paid  
3 on this request for a change order?

4 A. Yes, it does.

5 Q. I'm sorry. I had asked if this reflects  
6 the amount actually paid?

7 A. I believe I answered yes. Yes, it does.

8 Q. And how do I know that?

9 A. You asked me if I knew that, and I said it  
10 does because -- because I'm the guy who closes these  
11 guys out with their final amounts, and I'm not in  
12 the habit of changing the amounts that we agreed to  
13 in those proposals.

14 Q. Are there records that would reflect that  
15 payment was made in that amount?

16 A. Yes, there are.

17 Q. Now, let me turn to the front page of this  
18 and some handwritten notations on the bottom of the  
19 September 11, 1996 letter. Tell me what that those  
20 refer to, please?

21 A. This documents how much the Navy, even  
22 though they agreed to pay us a certain amount, have  
23 shorted us. Contract modification 50, they gave us  
24 \$2,058. In change order 55, they took away \$1,134,  
25 a net difference of 924. Our proposal was for

1       \$1,217. If you accept the payment from the Navy to  
2       date, the sum of those two other items, 50 and 55,  
3       that leaves a balance due of \$293 that the Navy has  
4       shorted us without telling us why.

5               MR. GROAT: Mr. Riordan, if I could ask at this  
6       point in time, if I could have you and Jim Zielinski  
7       step out of the room for just a moment. If I could  
8       confer briefly with Tim, I think this will move  
9       things along, and we can wrap things up in a fairly  
10      short order.

11             MR. RIORDAN: Sure. I'll have this page copied  
12      and faxed to you while we're at it.

13             MR. GROAT: Okay. That would be great. Thanks  
14      very much. I really appreciate it.

15                               (Brief recess)

16             MR. GROAT: Mr. Riordan, I have no further  
17      questions.

18             MR. RIORDAN: Okay. I have just a couple.

19             MR. GROAT: Sure.

20                               EXAMINATION

21                               By-Mr.Riordan:

22             Q. Mr. Zielinski, you were primarily  
23      responsible for dealing with the subcontractors that  
24      did the work covered by these claims; is that  
25      correct?

1           A.   That's correct.

2           Q.   And were you the one that would have  
3 approved the payments to each of them?

4           A.   Yes.

5           Q.   Is there any question in your mind that  
6 each of the subcontractors were paid the amounts  
7 shown on these documents subject to that one \$400  
8 difference that came up before that job was closed  
9 out?

10          A.   No, there's not.

11          Q.   All right. Now, is there necessarily or  
12 would there be in each instance an invoice for the  
13 exact amount shown with respect to each one of these  
14 subcontractors somewhere in the Sollitt files?

15          A.   No.

16          Q.   Why wouldn't there be in some instances?

17          A.   In the closeouts the final amounts paid are  
18 sometimes a net payment.

19          Q.   But in any case, based on your knowledge,  
20 experience, and involvement in this matter, you're  
21 saying categorically that those amounts were paid  
22 subject to the exception that I mentioned?

23          A.   Yes, I am.

24          MR. RIORDAN: That's all I have. I guess  
25 that's it?

1 MR. GROAT: No further questions.

2 MR. RIORDAN: All right. We'll reserve  
3 signature on the dep. Are ou going to have this  
4 typed up, Jack, before your motion?

5 MR. GROAT: It's supposed to be ready to me in  
6 ten days, so I have until the end of the month, so  
7 it shouldn't be any problem.

8 MR. RIORDAN: This is off the record.

9 (Discussion had off the record)

10 THE COURT REPORTER: Did you need a copy?

11 MR. RIORDAN: Yes.

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